

Abstract and Key words

Title – Right to Have Children and Cross-border Reproductive Care

Key words – cross-border reproductive care, reproductive tourism, assisted reproduction, access to reproductive care, causes of cross-border reproductive care, consequences of cross-border reproductive care, law evasion, right to procreate, right to have children

Abstract – Children give a meaning to man's life. In today's world where more than 10 % of women suffer from infertility, assisted reproduction treatment (hereinafter referred to as „ART“) occupies an important place. The topic of human reproduction is particularly delicate. There is no consensus on which ART methods are ethically acceptable and to whom ART should be provided. Therefore each and every state holds its own position in these matters. Difference among legal approaches results in patients seeking desirable treatment abroad. According to available data, most of the ART recipients travel abroad in order to evade legal barriers in their state of origin. Although in the most cases the ART abroad does not constitute any difficulties, in some cases problems may arise in connection with the treatment. States may try to prevent patients from traveling abroad in order to obtain the ART. They may try to protect themselves by refusing giving effect to legal consequences of such treatment. A desirable result of the treatment is from patient's point of view a birth of a child. However, states may refuse to recognize this parent-child relationship on its territory. Further, states may refuse to grant child a citizenship. Notwithstanding that parent's conduct may constitute an evasion to domestic law, according to international treaties states shall give priority to the child's best interest. European Court of Human Rights have decided on these matters in the past.

The Czech Republic is a typical destination country of „reproduction tourists“. Its legal system does not prohibit any of ART methods. However, it has more conservative approach on who should be entitled to request the treatment. Czech legal system grants right to undergo ART to infertile heterosexual couples only. It necessarily results in homosexual couples leaving the country in search for ART abroad. When returning back to the country, problematic situation may arise, as according to the Czech law it is not possible for two persons of the same sex to be parents of one child.

This paper deals with cross-border reproductive care, motives of patients seeking ART abroad, problematic aspects and possible solutions of this phenomenon. Special attention is given to regulation and problematic aspects in the Czech Republic.